

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of)
)
Implementation of Section 309(j)) PP Docket No. 93-253
of the Communications Act -)
Competitive Bidding)

RECEIVED

To: The Commission

AUG 22 1994

PETITION FOR PARTIAL RECONSIDERATION OF
MINNESOTA EQUAL ACCESS NETWORK SERVICES, INC.
AND SOUTH DAKOTA NETWORK, INC.

Minnesota Equal Access Network Services, Inc. ("MEANS") and South Dakota Network, Inc. ("SDN"), by their attorneys, jointly submit this petition for reconsideration on behalf of MEANS' 65 member companies, and SDN's 15 member companies. Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429 (1993), MEANS and SDN request reconsideration of the Commission's Fifth Report and Order, FCC 94-178, released July 15, 1994.

MEANS, SDN, and their member companies, who are rural telephone companies serving sparsely populated areas, applaud the creation of the entrepreneurs' band, and the other measures which will help designated entities participate in PCS. Moreover, they support the Commission's decision to permit rural telephone companies to participate in the entrepreneurs' band and to negotiate for partitioned broadband PCS service areas. However, these measures do not go far enough to ensure that PCS is provided to rural areas and that rural telephone companies may participate in providing broadband PCS. MEANS and SDN submit that the Commission should give bidding credits to rural

No. of Copies rec'd 11
List ABCDE

telephone companies and permit entities that are not rural telephone companies to make passive equity investments in rural telephone company consortia, in recognition of the capital intensive nature of providing broadband PCS to rural areas and in order to balance the opportunities the various designated entities will have to obtain capital.

In support of this petition for reconsideration, the following is shown:

I. INTERESTS OF MEANS and SDN

MEANS operates a centralized equal access system which serves independent telephone companies throughout rural Minnesota, as authorized by this Commission and by the Minnesota Public Utilities Commission. The MEANS centralized equal access system serves 266 rural telephone exchanges, having approximately 170,000 access lines. The MEANS network includes fiber optic cable linking a tandem switch located in Plymouth, Minnesota, a suburb of Minneapolis, with nine Toll Transfer Points located near all of U S WEST Communications, Inc.'s existing Minnesota access tandems. The MEANS system permits interconnection with interstate and intrastate interexchange carriers at the Plymouth tandem switch and/or at the nine Toll Transfer Points. The MEANS network also provides a platform for the provision of other services such as SS7. Furthermore, the MEANS network is used to provide two-way interactive video services, including distance learning.

SDN also operates a centralized equal access system. SDN's system, as authorized by this Commission and the Public Utilities Commission of South Dakota, serves 113 rural telephone exchanges (approximately 52,014 access lines) in both eastern and western South Dakota. SDN's centralized equal access system is comprised of a fiber optic network connecting a tandem switch located in Sioux Falls, South Dakota with the 113 participating rural exchanges. The network already serves as the platform for the provision of many services in addition to equal access. These services include screening for WATS and WATS-type services, access to emergency medical services, access to law enforcement, fire and other emergency services via Enhanced 911 service, and SS7 services. In addition, the capacity of this fiber network would facilitate the delivery of a wide array of other services being discussed that require more bandwidth than traditional voice grade services, such as distance learning programs, telemedicine programs, and two-way interactive video transmissions for educational, medical and government use.

MEANS and its member rural telephone companies, and SDN and its member rural telephone companies, are interested in providing PCS by using their existing fiber-based centralized equal access networks and tandem switches as the backbones for PCS networks. Both petitioners have participated vigorously in this and related proceedings, advocating the needs of their constituent rural communities.

II. THE COMMISSION SHOULD PROVIDE RURAL TELEPHONE COMPANY BIDDING CREDITS AND PERMIT INVESTMENTS IN RURAL TELEPHONE COMPANY CONSORTIA

MEANS and SDN agree with the Commission's bidding credit and installment payment mechanisms, as a way to help designated entities participate in the upcoming PCS auctions. In order to ensure that broadband PCS services are provided to rural areas as mandated by Congress, bidding credits should be extended to rural telephone companies in recognition of their status as one of the designated entities; and rural telephone consortia should be permitted to obtain investments by entities that are not rural telephone companies.

A. The Commission Should Afford Economic Opportunities Specifically for Rural Telephone Companies

The Fifth Report and Order does not make available bidding credits for rural telephone companies, and it does not provide opportunities for other entities to invest in rural telephone company consortia. The Commission's decision not to provide any economic opportunities specifically to rural telephone companies does not take into account the highly capital intensive nature of providing broadband PCS to rural areas. Fifth Report and Order, para. 153. Additionally, MEANS and SDN respectfully submit that the record does not support such disparate treatment vis-à-vis other designated entities.

The Commission has noted that rural telephone companies that qualify as small businesses will be able to take advantage of the small business preferences. Fifth Report and Order, para. 153.

This statement does not take into account the fact that Congress listed three groups to be considered for bidding credits: small businesses, businesses owned by minorities and/or women, and rural telephone companies. 47 U.S.C. § 309(j)(4)(D). As the Conference Report states, rural telephone companies were explicitly added into the list of designated entities which should be provided "economic opportunities." H.R. Rep. No. 213, 103rd Cong., 1st Sess., at 484 (1993). If Congress had wanted rural telephone companies simply to receive the economic preferences awarded to small businesses, Congress would not have listed rural telephone companies separately.

MEANS and SDN submit that the Commission should give rural telephone companies economic opportunities in the form of rural telephone company bidding credits and permit passive equity investments in rural telephone company consortia, and that these economic opportunities should be in addition to any spectrum-based preferences already available to rural telephone companies.¹ While MEANS and SDN support the inclusion of rural telephone companies in the entrepreneurs' band spectrum and related partitioning benefits, these measures simply do not provide the economic opportunities envisioned in Section 309(j)(4)(D) of the Communications Act of 1934, as amended, and

¹ NTCA supports bidding credits for rural telephone companies. NTCA Reply Comments, at 6, Nov. 30, 1993; see National Rural Telecom Association Reply Comments, at 16, Nov. 30, 1993 (requesting FCC to adopt measures to enable rural telephone companies to obtain capital and deploy PCS technology promptly).

the Fifth Report and Order fails to explain any interpretation to the contrary.

The Commission already has recognized that broadband PCS is a very capital intensive service. Fifth Report and Order, para. 98. It is even more so in rural areas. The high capital investments rural telephone companies have in their wireline telephone operations are indicative of the costs they will encounter in providing service coverage for broadband PCS. MEANS and SDN submit that all but the large dominant communication providers and others with "deep pockets" will have difficulty obtaining the financing needed for the auction price and for construction costs for providing broadband PCS in rural areas.

The rural telephone company bidding credits established in the Second Report and Order, 9 FCC Rcd. 2348, 2391-92 (1994), would be all for naught if the Commission does not make them available for the broadband PCS auctions. The Commission has not provided rural telephone company bidding credits for narrowband PCS, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking (Implementation of Section 309(j) of the Communications Act - Competitive Bidding Narrowband PCS), PP Docket No. 93-253, FCC 94-219, paras. 87-91, released Aug. 17, 1994 [hereinafter Narrowband PCS Third MO&O], and IVDS, Fourth Report and Order (Implementation of Section 309(j) of the Communications Act - Competitive Bidding), 9 FCC Rcd. 2330, 2337-39 (1994). It is improbable that licenses for telephone maintenance or Basic Exchange Telecommunications Radio Service

(BETRS) will be subject to auctions. The only auction in which bidding credits will be meaningful for a rural telephone company is the broadband PCS auction.

While MEANS and SDN applaud the Commission's adoption of partitioning rules, partitioning may not be a viable option for some rural telephone companies. For example, partitioning must be negotiated, and there is no guarantee that a rural telephone company will be able to obtain reasonable terms from a winning bidder in order to obtain a partitioned PCS license. Also, even if negotiation would succeed, some rural areas may not be economically viable as partitioned PCS license areas; the rural telephone company may need to bid for the BTA which includes its rural service area, so that system-wide revenues can be used to extend service to high-cost rural areas. Thus, while partitioning may facilitate the provision of service to many rural areas, some rural telephone companies may still require economic opportunities in the auction itself to assist them in providing service to rural areas.

In sum, meaningful auction opportunities designed specifically for rural telephone companies comport with congressional legislation, and are mandated by the capital challenges facing rural telephone companies.

B. The Economic Opportunities for Rural Telephone Companies Should Balance the Preferences Given to the Other Designated Entities

The difficulties rural telephone companies may encounter in obtaining financing to participate in broadband PCS are exacerbated by the competitive disadvantage under which they are placed by the Commission's rules permitting large equity investments in businesses owned by minorities and/or women. Businesses owned by minorities and/or women may have up to 75% equity investment by entities with "deep pockets," without forming consortia and while retaining their 15% bidding credit. By contrast, the bidding credits will be available to many rural telephone companies only if they qualify as a small business. However, even if a rural telephone company qualifies as a small business, if it joins a consortium to muster the capital necessary to provide broadband PCS, it will lose the 10% bidding credit if any member of the consortium does not qualify as a small business. See Fifth Report and Order, paras. 179-80.

This disparity in treatment between designated entities could grow even wider if the Commission were to adopt in the broadband PCS proceeding the 40% bidding credit for businesses owned by minorities and/or women which was recently adopted in the narrowband PCS proceeding. See Narrowband PCS Third MO&O, para. 58. Indeed, if businesses owned by minorities and/or women were afforded a 40% bidding credit in the broadband PCS auctions, and such businesses also qualified for the 10% bidding credit for small businesses, these businesses would realize a 50% bidding

credit. Such action would exacerbate an already substantial disparity that denies rural telephone companies any bidding credits and meaning consortia benefits, while extending these benefits to other designated entities.

MEANS and SDN applaud the Commission's efforts to create meaningful opportunities for businesses owned by minorities and/or women, and do not ask that their bidding credits be diluted. Instead, MEANS and SDN request that some balance be maintained among the preferences given to designated entities, in four respects. First, rural telephone companies should be given a bidding credit, such as 10%, similar to the bidding credit for small businesses. Second, the rural telephone company bidding credit should be cumulative with other designated entity bidding credits, so that, for example, a small rural telephone company would qualify for a 20% bidding credit where it also qualifies as a small business. Third, if the Commission were to adopt a 40% bidding credit for businesses owned by minorities and/or women, bidding credits for the other designated entities also should be increased to maintain some semblance of balance. Finally, rural telephone company consortia should be permitted to have outside passive equity investors, in the same fashion that businesses owned by minorities and/or women may.²

These steps will help keep the cost of entry low to facilitate acquisition of licenses by rural telephone companies, and the provision of PCS service to rural areas.

² See NTCA Comments, at 3, Nov. 10, 1993.

CONCLUSION


For the foregoing reasons, MEANS and SDN respectfully request the Commission to establish bidding credits specifically for rural telephone companies participating in the broadband PCS auction, and to permit passive equity investments in rural telephone company consortia by entities that are not rural telephone companies.

Respectfully submitted,

**MINNESOTA EQUAL ACCESS NETWORK
SERVICES, INC.**

and
SOUTH DAKOTA NETWORK, INC.

By


Benjamin H. Dickens, Jr.
John A. Prendergast
Susan J. Bahr

Their Attorneys

Blooston, Mordkofsky,
Jackson & Dickens
2120 L Street, N.W.
Washington, D.C. 20037
(202) 659-0830

Dated: August 22, 1994

CERTIFICATE OF SERVICE

I, Christs L. Sanden, hereby certify that I am an employee of Blooston, Mordkofsky, Jackson & Dickens, and that on this 22nd day of August, 1994, I caused to be hand-delivered a copy of the foregoing **"Petition for Reconsideration of Minnesota Equal Access Network Services, Inc. and South Dakota Network, Inc."** to the following:

Chairman Reed Hundt
Federal Communications Commission
1919 M Street, NW Room 814
Washington, DC 20554

Commissioner James Quello
Federal Communications Commission
1919 M Street, NW Room 802
Washington, DC 20554

Commissioner Andrew Barrett
Federal Communications Commission
1919 M Street, NW Room 826
Washington, DC 20554

Commissioner Rachelle Chong
Federal Communications Commission
1919 M Street, NW - Room 844
Washington, DC 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, NW - Room 832
Washington, DC 20554

Robert M. Pepper, Chief
Office of Plans and Policy
Room 822
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Donald Gips, Deputy Chief
Office of Plans and Policy
Room 822
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Jonathan Cohen
Office of Plans and Policy
Room 814
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

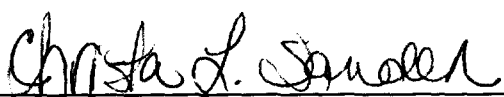
Evan Kwerel
Office of Plans and Policy
Room 822
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

William E. Kennard, General
Counsel
Federal Communications Commission
Room 614
1919 M Street, NW
Washington, DC 20554

Sara Seidman, Special Assistant
Office of General Counsel
Federal Communications Commission
Room 614
1919 M Street, NW
Washington, DC 20554

Peter Tenhula
Office of General Counsel
Federal Communications Commission
Room 615
1919 M Street, NW
Washington, DC 20554

ITS
Room 246
1919 M Street, NW
Washington, DC 20554


Christa L. Sanden